**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

# MISC.CIVIL APPLICATION No. 1623 of 2005

**For Approval and Signature:**

## HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SHITABEN DINESHBHAI MAKWANA & Anr**

**Versus**

**DINESHBHAI RAVJIBHAI MAKWANA**

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**Appearance :**

MS HINA DESAI for Applicants
MR Hasit Joshi for Opponent

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**CORAM : HONOURABLE MR.JUSTICE J.R.VORA**

**Date : 30/09/2005**

## ORAL JUDGMENT

1 Learned Advocate Ms. Hina Desai for the applicants and learned Advocate Mr. Hasit Joshi for Opponent.

2 Present applicant No.1 is wife and the

opponent is the husband and the marriage between the two solemnized at Rajkot on 11th of February, 2000. Out of that wedlock, a son is born, who is applicant No.2 herein and is minor at present. During marriage life, as per the allegations made by the wife – applicant No.1, she was harassed, tortured by her in-laws and, therefore, she was forced to move out of the house of her husband along with her son and since then for about two and half years she is residing at her parents house in Rajkot with her son. She preferred an application under Section 125 of the Criminal Procedure Code in the court of learned Chief Judicial Magistrate, Rajkot, for maintenance of her and her son and also filed an application for interim maintenance, but both the applications are pending before the Chief Judicial Magistrate, Rajkot. However, on 29th of June, 2004, husband – opponent preferred one Hindu Marriage Petition, bearing No. 39 of 2004, against the applicant under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. This application is preferred under Section 24 of the Civil Procedure code for seeking transfer

of the said Hindu Marriage Petition No. 39 of 2004 pending before the Civil Judge (SD), Jamnagar to appropriate court at Rjakot on the ground that it would be difficult for the wife to go to Jamnagar and attend the said Hindu Marriage Petition.

3 From contentions raised on behalf of the applicants and going through the record, it appears that, at present, the applicant is residing at Rajkot with her parents. She has no source of income at present as applications for maintenance and interim maintenance are pending before the Chief Judicial Magistrate at Rajkot, it would not be possible for her to attend the court at Jamnagar on each date going from Rajkot and leaving her son behind. It is also submitted that they are of weak economic condition and father of the applicant No.1 is less salaried person.

4 In view of above, the application is allowed and it is directed that Hindu Marriage Petition No. 39 of 2004 pending before the learned Civil Judge

(SD) at Jamnagar stands transferred to the District of Rajkot. The learned Civil Judge (SD), Jamnagar, is directed to transmit the Record and Proceedings of Hindu Marriage Petition No. 39 of 2004 to the District Judge, Rajkot, through the District Judge, Jamnagar. On receiving such Record and Proceedings, the learned District Judge, Rajkot, shall allot that Hindu Marriage Petition No. 39 of 2004 for further proceedings and disposal according to law, to the court of competent jurisdiction at Rajkot. Rule made absolute. DS permitted.

**(J.R.VORA, J.)**

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